DIVISIONAL FOREST OFFICE
SOUTHERN CIRCLE.
WORKING PLANS PARTY II.

104
Inwd. Regr. No. 104
Date 21-10-99

INAMS AND JA'GHIRS.

I.—The Summary Settlement.

1. All inám holdings in existence in alienated villages at the commencement of British rule, and since enjoyed, should receive the benefit of the Summary Settlement without reference to the origin of the grant. (G. R. No. 2004, dated 2nd June 1860.)

2. Bombay Act II of 1863, and not Bombay Act VII of 1863, is applicable to the annexed tálukas of the Kánara District. (L. R. No. 18, dated 2nd May 1864; *vide* G. R. No. 1880, dated 14th idem.)

3. Bombay Act II of 1863 applies to the territories in which Act XI of 1852 was in force, Bombay Act VII of 1863 to those parts of the Presidency not subject to the operation of that Act. From Sections 1 and 2 of Act XI of 1852 it appears that that Act was applicable to every part of the Presidency "not brought under the General Regulations of Government by Regulation XXVIII of 1827;" and the preamble also shows that it was intended to extend to districts recently annexed to the Bombay Presidency in which claims to ináms were excepted from the cognisance of the ordinary Civil Courts.

Act XVII of 1844 divided Angria's lapsed territory into two parts, viz., (1) a portion within the boundaries specified in Section 1 in which the Administration was to vest in an Agent to the Governor, and (2) the portions not included within those boundaries which it was enacted by Section 5 should be "subject to the same Laws and Regulations and shall be governed in all respects in the same manner as the portions of the territories subject to the Government of Bombay by which such portions of the said lapsed territory may be respectively surrounded or to which such portions of the said lapsed territory may be respectively contiguous." This last quoted enactment undoubtedly placed the portions of the lapsed territory to which it referred under the same law as regards ináms as was in force in the rest of the Sub-collectorate of Kolába, viz., Chapters IX and X of Regulation XVII of 1827, by which claims to ináms were subject to the cognisance of the Civil Courts. It was on this ground that Mr. Rogers and Colonel Etheridge were of opinion that Bombay Act VII of 1863 applied to these portions of the lapsed territory.

But those gentlemen appear to have taken no account of Act VIII of 1853 which repealed Act XVII of 1844, and brought the whole of the lapsed State of Kolába under the General Laws and Regulations of the Bombay Presidency and at the same time excepted claims to ináms on the whole of that territory from the cognisance of the Civil Courts. The effect of this enactment was to bring all the villages of the lapsed State under the operation of Act XI of 1852; and that this was the view of the Legislature is shown by Section 5 of Act X of 1876, as amended

by Section 1 of Act XVI of 1877, which revived the jurisdiction of the Civil Courts in claims to hold lands wholly or partly free from payment of land revenue wherever it had before existed, and mentioned amongst the districts in which this was the case (*vide* the second schedule of the Act) the District of Kolába "exclusive of the lapsed State of Kolába mentioned in Act VIII of 1853."

(L. R. No. 1326, dated 1st September 1890; *vide* G. R. No. 6510, dated 22nd September 1891.)

4. In exercise of the powers conferred by Section 5 of Act XIV of 1874 (The Scheduled Districts Act) the Governor of Bombay in Council is pleased, with the previous sanction of the Governor General in Council, to extend Sections 4, 5 and 15 and the rules in Section 2 of Bombay Act II of 1863 to the táluka of Peint in the Násik District. (G. N. No. 6567, dated 24th September 1891.)

5. Except in cases of fraud, the Summary Settlement should be offered to all holders of alienated land who had duly appealed against decisions passed by the Inám Commissioner under Act XI of 1852 and whose appeals were undecided. In the cases in which the benefit of the Summary Settlement could not be granted owing to the lands being found to have been held on *service* tenure by District Hereditary Officers, &c., the holders should be allowed the option of accepting the terms of settlement sanctioned for service holdings. (G. Rs. Nos. 1300, dated 17th April 1861 and 2761, dated 21st July 1864.)

6. Lands claimed by Hereditary Officers as forming part of their service watans, but entered in the accounts of the British Government as *personal* holdings should, with respect to the Summary Settlement, be regarded as personal holdings subject under the terms of the settlement to the payment of cháuth and nazrána. Lands claimed as personal holdings, but described in the Revenue Records of the British Government as service watans, should not be allowed the benefit of the Summary Settlement without the special permission of Government. The course indicated above should be adopted in cases where there is no reason to doubt the accuracy of the entry in the accounts of the British Government. In the case of Sátára, the accounts of the British Government must for this purpose be taken to include those of the Rája for the period intervening between the British accession in 1817-18 and the lapse of the Sátára State in 1848. (G. Rs. Nos. 3097, dated 8th July 1861, and 2784, dated 18th July 1862.)

7. The holders of Jadeed Ináms granted by Dumaldárs in villages or districts now become or becoming khalsat may be admitted to the Summary Settlement, provided the Jadeed Ináms have been granted prior to the year 1860. (G. R. No. 5330, dated 14th December 1861.)

8. The terms of the Summary Settlement are not applicable to such grants of lands as those made unconditionally by the British Government to the family of persons killed in the service of Government. Such lands should be considered to be hereditary in the fullest sense of the term, unless positive proof is forthcoming that there was any restriction in the grant. (G. R. No. 3347, dated 1st October 1863.)

9. The Summary Settlement is not to be *offered* to those holding grants from the British Government, nor to those whose claims have been adjudicated; but there is nothing to prevent those Inámdárs obtaining any further privileges the Summary Settlement would give them if they paid for it. (G. R. No. 39, dated 6th January 1864.)

10. The object of Government Resolution No. 39, dated 6th January 1864, was to prevent the Summary Settlement, so far as it affected title, being offered in adjudicated cases, or in cases where the grant was made by the British Government. It was not the intention of Government to withhold the offer of the one-anna settlement, by which the property would be made heritable and transferable without restriction of any kind. (G. R. No. 3870, dated 13th August 1870.)

11. The following rules which were laid down in 1859 (G. R. No 289, dated 24th January 1859) should be adopted as the general rules relating to service lands in Gujarát which it is necessary to lay down in order to apply Act VII of 1863 to this class of holdings, subject to the modification that their application under clause 3, Section II, of that Act to the service lands of any districts shall not necessarily await the Survey Settlement of that district, but may be carried out, as circumstances may require, in surveyed or unsurveyed districts alike. The rules shall be liable to modification as may from time to time be thought fit, and the Commissioner should submit proposals for any alterations which experience may suggest. Authority to settle village service lands under these rules is allowed to the Commissioner, who should, however, submit for sanction the principles by which he proposes to determine what classes of service are no longer required, the lands held in such cases becoming liable to resumption under Rule II :—

(I) All lands entered in the public accounts as held by village servants or for the performance of village services, and all lands which, although not hitherto so entered, were granted or from their nature evidently intended to be held, for the performance of such services, are liable to assessment, and will be subjected to these rules on the introduction of the revised survey rates into a district. In no case will the occupant's possession of the land be disturbed.

(II) Lands held for the performance of services no longer required by the State or by the

community, or not rendered, will be at once assessed.

(III) Special exceptions are admissible under the orders of Government in favour of individuals to whom it may be advisable to continue the exemption either temporarily or permanently.

(IV) If the services of the holders be still required, it is to be distinctly understood that it is not desired to resume the land, but the object of Government is to prevent the land from being diverted from the purpose for which it was given, and to secure it to the person who performs the service.

(V) If the services of the holder be required, the land will be continued free of assessment and entered in the accounts as service watan.

(VI) But land alienated out of the family to which the watan belongs will cease to be entered as service watan, and will be assessed as khalsat. The person who performs the service will then be remunerated by a cash payment of such amount as may be deemed expedient.

(VII) In fixing the remuneration of the officiating Pátel or other servant, the assessment leviable on the service watan land will be taken into consideration.

(VIII) Lands originally held for the performance of such services, which may have been sub-divided among different families or among different branches of the same family, will be treated as above without reference to the present position of the holder.

(IX) The holders of such lands who may by custom or by right be entitled to perform service, will elect one or more of their number as may be required, to perform the duty, and receive the emoluments, either for life or a term of years, and failing their appointment, the *controlling officer will make the election under Act XI of 1843.

* At the time of settlement, the Settlement Officer: afterwards the Collector.

(X) All lands held rent free or partially assessed for the purpose of providing food for travellers, food or water for cattle or other animals, water for passengers on the public roads or the annual excavation of village tanks, will be resumed on the introduction of the revised survey assessment, unless

1. The assignment may have been guaranteed by treaty or by special agreement with the holders of the village, when ceded to the British Government or unless
2. The Right Honourable the Governor in Council confirm the exemption, on being satisfied of the real public utility of the service for which the land is held.

(XI) Nothing in the above rules is to prevent the Right Honourable the Governor in Council or

any officer acting under his authority from sanctioning special exceptions in favour of the holders of service lands in cases in which the public interests would not be injuriously affected by such a course.

(G. R. No. 3973, dated 11th November 1863.)

12. The suggestions made by the Revenue Commissioner, N. D., in his following letter No. 1000A, dated 18th April 1864, were approved by Government :—

"In the rules for the treatment of village service lands in Gujarát, for which a renewed sanction was given in Government Resolution No. 3973, dated the 11th November last, there is no provision for dealing with the holdings of those village servants whose services, though not required by the State, are useful to the village communities.

"2. The lands of these village servants in Khándesh are continued subject to one-fourth of the assessment, with an obligation to continue service. The lands of other village servants are subjected to payment of one-half the assessment without any obligation of service.

"3. I was about to recommend for Gujarát a similar settlement to be made applicable to the holdings of all but those so-called village servants who never were and never will be useful to any one. But I have reason to believe that it would not be acceptable to those concerned to be exempted from the supposed honour of serving the village, and that it would be more popular, in Gujarát at least, to impose a salámi continuing the lands among those held liable to village services than to impose the same salámi and declare the holding to be unrestricted private property. I propose, therefore, to treat both classes alike in this respect, and, while subjecting the holdings of the more useful village servants to the cess of one-fourth, and those of the less useful to one-half, I would relieve them in both cases of the obligation to perform service for Government, but maintain both classes in the rank of village servants.

"4. I have now the honour, with reference to paragraph 2 of the Resolution above quoted, to request sanction to this settlement.

"5. With reference to paragraph 3 of the same Resolution, I beg to state that, under the varying circumstances of different villages, it is difficult to determine beforehand what classes of servants are useful. Moreover, in the course of the settlement, village servants are discovered under new and local denominations, which, not being known at present, would be left out from any classification now submitted to Government. It often happens, too, that village servants bearing the same appellation are found to perform totally different duties in different districts. Under these circumstances, I would suggest that, in accordance with the rules laid down, I be allowed to settle the holdings of different village servants; and at the end of the settlement I can submit a statement explaining how the lands of the different classes of servants have been disposed of."

(G. R. No. 1930, dated 18th May 1864.)

13. In Gujarát where under the above Resolution (No. 1930, dated 18th May 1864) a right of property is not conceded to owners of holdings subjected to half assessment, it should be distinctly stated in the sanads which will be given to release such holders from all future Government demands that the remainder of the holdings is continued on service tenure as untransferable property, and liable

to the obligations of the usual village services. (G. R. No. 73, dated 7th January 1865.)

14. In cases in which the realizable amounts under the Summary Settlement fall below one rupee, the holders are permitted to redeem the annual payments at 25 times the amount, which rate is fixed on the principle laid down by the Government of India in their Resolution No. 3264, dated 17th October 1861, republished at pages 908-914 of the *Bombay Government Gazette* of 21st November 1861, in their instructions regarding the redemption of Government revenue. It will be stated in the sanads issued in such cases that the annual payments have been commuted for a single payment made once for all.

The sums paid in redemption of the payments should be dealt with in the manner provided for in the instructions referred to.

(G. R. No. 1866, dated 12th May 1864.)

15. With reference to the following letter from the Revenue Commissioner, S. D., No. 3575, dated 8th September 1864, that officer was informed that he might apply the foregoing Resolution to those cases only for which it was intended, *viz.*, where realizable amounts fall below one rupee, and so save the labour of annual collection of a number of trivial payments:—

"I have the honour to report that I duly communicated to the Collectors of the Southern Division the order contained in Government Resolution No. 1866, dated 12th May 1864.

"The ready assent accorded to the proposition submitted by Mr. Ellis on the 22nd April 1864, which was disposed of by Government in less than three weeks after its date, emboldens me to hope that His Excellency the Governor in Council will ere long take into consideration the following proposition which I submitted more than two years ago, in a memorandum No. 1019, dated 9th May 1862:—

'The Commissioner thinks that as the chauthái and annual nazrána paid by Inámdárs who have accepted the Summary Settlement are finally fixed, and can never be enhanced, there would not be the least objection to their being at once redeemed under the orders of the Government of India, and he begs for permission to inform the Collectors in his division that they are at liberty to at once accept any offers made to them for the redemption of the Government dues in *such* cases.'

"If Government will give me the permission asked for in the above quoted memorandum, I propose to inform the Collectors that Inámdárs generally may be allowed to redeem their fixed dues to Government at the rate of 25 years' purchase proposed by Mr. Ellis in the case referred to in his proposition."

(G. R. No. 4197, dated 24th October 1864.)

16. The redemption authorized by Government Resolution No. 1866, dated 12th May 1864, is to be applied also to the ináms of the village officers which have been subjected to payment of half assessment, in accordance with Government Resolution No. 2606, dated 1st June 1861. (G. R. No. 73, dated 7th January 1865.)

17. If inám lands have passed out of the family of the Inámdár, the holder of such lands must, unless his title to exemption from the payment of land revenue has been formally adjudicated upon before the passing of Bombay Act II of 1863, either accept the Government guarantee on the terms prescribed by that Act or must submit his claim to trial, according to Act XI of 1852, in the manner and subject to the liabilities provided by Section 6 of Bombay Act II of 1863. A party who has become the assignee or transferee of inám lands before a formal adjudication upon the title to exemption, comes within the definition of a 'holder' as defined by Section XVI (clause F) of the latter Act, and must prosecute a separate claim under Section 6 of the Bombay Act if he seeks to establish a title to exemption. By 'assignee' or 'transferee' is meant a person to whom a permanent interest in the land has been conveyed, or at least a larger interest than that of a mere tenant, sub-tenant, or agent, in occupation of the land. Inám lands which have been adjudged to be exempt from payment of land revenue under Section 6 of Bombay Act II of 1863, and which, by the operation of that section, have subsequently become liable to pay the full assessment in consequence of their being transferred either by operation of law or by the act of the party to some person other than the heirs of the Inámdár in whose favour the exemption is established, do not regain the character of being exempt from assessment by reason of their afterwards revesting in such heirs: such heirs come into possession of the lands by a new title. In transferring the lands to a stranger, the title to exemption is lost, and there is no provision in the Act reviving such title when once it is lost. (L. R. No. 24, dated 13th June 1864; *vide* G. R. No. 2690, dated 15th July 1864.)

18. In using in report No. 24 of 1864 the words "accept the Government guarantee on the terms prescribed by Bombay Act No. II of 1863" the Legal Remembrancer has used the language employed in the first section of that Act, which enacts that "when holders of lands, &c., shall have consented to submit to the terms and conditions hereinafter described, &c., it shall be lawful for the Governor in Council to finally authorize and guarantee the continuance in perpetuity of the said land to the said holders, their heirs and assigns, upon the said terms, and subject to the same conditions."

These terms and conditions are found in the second and subsequent sections of the Act. The principal terms are that the land-holder shall consent to pay a fixed annual payment as nazrána, and a quit-rent equal to one-fourth of the assessment. The land-holder also consents that the assessment upon which the one-fourth is to be calculated shall be ascertained according to the rules laid down in the second section of the Act, and he

further consents, if his land already pays a judi, &c., to Government, to pay, besides the judi, &c., a fourth of the difference between the judi, &c., and the full assessment.

Another term is that, if the amount of the annual nazrána exceeds ten rupees, the land-holder may at his option pay, under Section 5 of the Act, an occasional nazrána, instead of an annual one.

These appear to be the principal terms imposed upon a land-holder whose title to exemption had not been formally adjudicated upon before the passing of the Act, and who chooses to dispense with an enquiry into his title, and accept the Government guarantee.

As to land-holders whose title to exemption has been established by a formal adjudication before the passing of the Act, it appears that, under Section 4 of the Act, they can at their option procure the recognition by Government of the right of their heirs collateral and their heirs by adoption to inherit on the terms that they consent to pay an annual nazrána in addition to any partial assessment (if any) that may have been already laid upon them.

(L. R. No. 49, dated 18th October 1864; *vide* G. R. No. 4505, dated 14th November 1864.)

19. Persons adopted after the promulgation of the Summary Settlement, in right of paying nazrána, should be regarded as having entirely the same right as if they had been begotten sons born on the day of their adoption, so far as regards compensation for rights which are appurtenances of the ináms for which the settlement allowing of adoptions was made. The restriction in the rule* which directs that no compensation for duties abolished by Acts I of 1838 and XIX of 1844 should be granted in the case of ináms the continuance of which to adopted sons has been sanctioned by Government subsequently to the passing of those Acts, must, however, be retained in respect of all adopted persons whose adoption Government could legally have refused to recognize; and also in respect to claims for compensation in lieu of rights not being appurtenances of property guaranteed by the Summary Settlement to adopted sons. (G. R. No. 2011, dated 11th May 1865.)

**Vide* clause 1st of Order No. X under the head of Hakdárs, and the foot-note to it at p. 306 of the Revenue Circular Order Book.

20. The provisions of Section 6 of Bombay Act II of 1863 are not retrospective, and in the case of land transferred before adjudication, the title of the transferee is co-extensive in point of duration and extent with that which his assign had at the date of assignment. (G. Rs. Nos. 3079, dated 19th July 1865, and 3884, dated 14th September 1865.)

21. Mámlatdárs may enter the name of a successor to a Summary Settlement inám holding when the applicant is either the eldest son or (in the event of there being no male heir) the widow of the person last entered. In all other cases a certificate of

heirship from the Civil Court should be required. (G. R. No. 2187, dated 4th June 1868, and G. R. No. 1343, dated 10th March 1870.)

22. The holders of alienated land must in common with the rest of the community pay income tax, and the fact of their having accepted the Summary Settlement cannot be held to afford them such exemption. Nor can they claim exemption from local taxation. All that they are entitled to under the Summary Settlement is exemption from any increased demands on account of Imperial land revenue. (G. R. No. 1889, dated 19th April 1870.)

23. The Summary Settlement is not applicable to a "Sarv inám." (G. R. No. 5693, dated 14th November 1871.)

24. The person to whom the notice under Section 11 of the Summary Settlement Act No. II of 1863 was served, must be held responsible for due notice being given on any change of possession of any part of the land for which the settlement was made with him. Under clause 2, Section 5, each person obtaining possession of the land, whether by inheritance or transfer, is bound, within the period of one month from obtaining possession thereof, to give notice to the Collector, and in the event of his not so doing "shall forfeit, in addition to the nazrána leviable on the occasion, a sum equal to the amount thereof."

The holder by clause 3 is also bound to give notice, and this notice it appears must be given by the person with whom the agreement was made, who has accepted the position of the holder of the land.

Should any holder object to the position in which he stands to his sub-sharers, he might transfer in a formal manner their shares to them, when they would have to pay the usual nazrána. The very object of these notices is that Government may know who is placed in possession of the land, and when lands are so transferred without any lien being retained on them by the superior holder, the names of the parties to whom the lands are transferred will have to be entered in the Government accounts, and after that they will in every way be considered as the holders and owners of the land, and all responsibility on the part of the superior holder will cease. (G. R. No. 2940, dated 22nd May 1873.)

25. In the following case submitted by the Commissioner, N. D., for the opinion of the Legal Remembrancer with his letter No. 2694, dated 4th May 1874, the latter officer in his report No. 79, dated 6th July 1874, advised that Government had no power to interfere directly with the deceased's estate, and that the proper course was to request the Court to appoint an administrator under Section 9 of Regulation VIII of 1827 and to leave it to the Court to decide as to its eventual disposal:—

"I have the honour to ask for the favour of your opinion in the following case.

"A person had several fields to which the Summary Settlement had been applied, he paid a quit-rent of Rs. 2-13-0 and the nuksán or loss to Government is Rs. 10-15-0 per annum. Some 30 years ago he mortgaged these fields and I understand that the debt for which these fields are held as security, is about equal to the full value of the property. The mortgagor is dead; he has left an heir who, however, puts in no claim to the deceased's estate because it is encumbered to its full or more than its full value. Practically, therefore, there is no heir and the property lapses to Government as an escheat. The mortgagee of course must get paid, but is it competent to him to object to the property lapsing to Government while his mortgage subsists, and can he object to receive his debt from Government on the ground that Government is not his debtor and is a stranger to the transaction, whose interference would put an end to the interest he now possesses in the property. I ask this supposing that Government may think it advisable to take the property and pay off the debt, but in this case must they take the whole property or the land only? Of course they will not be responsible for a greater sum than the value of the assets."

(G. R. No. 3608, dated 14th July 1874.)

26. In the case of inams adjudicated under Act XI of 1852 and declared permanently continuable subject to whatever orders Government may pass regarding the levy or remission of nazrána on succession, the first proviso in Section 5 of Act II of 1863 should be made applicable in cases where more than one succession occurs within one year, and nazrána at the rate of one year's income should be taken once on account of all such successions within a year.

As regards the minor inams in respect to which no proviso for nazrána was made in the decisions, the terms of the decisions should be upheld and no nazrána levied. (G. R. No. 4624, dated 28th August 1874.)

27. The amount of nazrána is to be limited in all cases to one year's income. (G. R. No. 6440, dated 5th December 1874.)

28. Rule 1 annexed to Section 2 of Bombay Act II of 1863 only contemplates one assessment of an inám holding by the revenue survey for the purposes of that Act, and when at the time of the Summary Settlement the revenue survey has already imposed an assessment on any such holding, the rule requires that that assessment shall be accepted for the said purposes without further question.

The amount of the annual nazrána leviable under Section 2 and that of occasional nazrána leviable under Section 5 are both made to depend upon this assessment, if any have been imposed, the object clearly being that both should be fixed sums settled once for all.

Under this view, a revised survey settlement cannot affect the amount of the occasional nazrána which has been ascertained once for all under the rules annexed to Section 2 of the Act, in accordance with a previous assessment by the revenue survey.

(L. R. No. 18, dated 4th January 1887; *vide* G. R. No. 523, dated 21st idem.)

29. The following report of the Legal Remembrancer, No. 1326, dated 5th November 1881, on the subject of a disputed right to a share of an alienated village was communicated to all Collectors and the Commissioners of Divisions :—

"The correspondence shows that the inám village of Dári in the Násik Táluka of the Násik District was settled under Bombay Act II of 1863, and became the heritable transferable property of the holders. One-third share belonged to Sakhárám Dikshit and on his death, as he was separated from the rest of his family, it passed by inheritance to his widow, Lakshmibái, who by deed of gift transferred the share to her daughter, Durgábái. On the death of Lakshmibái the management of the share was taken over by Vináyak, a male collateral in descent from the original grantee, who now claims to be entitled to be recognized as owner of the share.

"2. The Collector is in favour of Durgábái's claim not only by reason of the deed of gift, but because she is the heir of her deceased mother. The Commissioner, C. D., on the other hand, considers that any claim Durgábái may have, cannot be recognized until she has obtained a certificate of heirship and legal possession of the share, while Vináyak is in actual possession and disputes her claim.

"3. The question actually involved is the payment of nazrána, a payment in accordance with ancient and established usage associated with the confirmation of hereditary claims. The disputant, who is allowed to pay the nazrána, must be considered the owner. The nazrána is to be levied from the person who obtains possession of the land to which it is subject, whether by inheritance or transfer.

"4. According to Hindu law, Durgábái is entitled to succeed to the share in question as the heir of her mother. Vináyak's possession, which seems to be the only substantial reason he has for his pretension, is nothing more than that of trustee, and he is responsible to the lawful heir for all the profits of the share since Lakshmibai's death.

"5 Under the circumstances stated in the *précis* of correspondence I am of opinion that as there appears to be no question at all as to the right of Durgabai to succeed, the production of a certificate of heirship is not essential, and that there can be no objection to her name being entered as the holder of the share. She is in legal possession of the share by inheritance apart from any right she may have under the deed of gift. A certificate of heirship would not help her to obtain actual possession, and should she be resisted by Vinayák, her only course will be to sue to eject him. But this has nothing to do with the entry of her name in the accounts and the levy of nazrána from her in accordance with law."

(G. R. No. 7139, dated 26th November 1881.)

30. The assessment under Section 5 of Act II of 1863 is to be ascertained with reference to Rule 3 under Section 2 when there is a mámul judi. Suppose, for instance, that inám land assessed at Rs. 243 and subject to the payment of old or mámul judi Rs. 3 has been brought under the operation of the Summary Settlement, Rs. 60—that is to say, one-fourth of Rs. 243 *minus* the old judi Rs. 3—has been fixed as the chauthái, and as regards the nazrána it has been agreed that the occasional instead of an annual nazrána shall be paid. In this in-

stance, Rs. 240 (*i. e.*, the full assessment *minus* Rs. 3 mámul judi) should be taken as the assessment under Section 5. (G. R. No. 3294, dated 23rd April 1885.)

31. If the assessment of a village for the purpose of settling the amount of quit-rent payable under the Summary Settlement by the Inámdár of that village has been already once for all fixed under either Rule 1 or Rule 2 of Section 2, Bombay Act II of 1863, it cannot now be questioned; but if the question of the proper assessment of any village or of any portion of a village was expressly reserved for future consideration, there would be good ground for completing what was previously left unfinished.

A reference to the above-mentioned Rule 1 will show that it is erroneous to say that settlement judi is liable to modification 'on the introduction of survey rates' into an inám village. All that the rule contemplated was that in the case of villages as to the assessment of which, for the purpose of calculating Summary Settlement quit-rent, the Collector and the holder could not agree, the assessment should be 'the existing rental of the lands until the revenue survey * * * shall have placed a new assessment thereon, after which the assessment so placed by the said revenue survey shall be understood to be the assessment.' There is a great difference between the introduction of survey rates into a village and the placing of an assessment in a village by the revenue survey, and if the settlement of the assessment has been deferred in any case till the former occurrence takes place, the procedure has been irregular. In several districts the revenue survey assessed some inám villages merely for the purpose of satisfying the requirements of the above Rule 1. Where this has been done, the assessment fixed by the survey is final, whether the survey assessed kuráns and waste land or not.

Inám land could, of course, not be forfeited to recover any illegal demand, but if an Inámdár refused to pay quit-rent lawfully due by him, all the methods prescribed by the Revenue Code for the recovery of revenue demands could be enforced against him or his property.

(L. R. No. 267, dated 24th February 1886; *vide* G. R. No. 1957, dated 12th March 1886.)

32. When the quit-rent payable under Bombay Act VII of 1863, Section 6, Rule 4, in respect of summarily settled alienated land has once been imposed as ascertained by an assessment made by the Revenue Survey, it cannot be affected in any way by any subsequent revision of survey. The words of the rule seem so plain that no other interpretation can be placed on them. The rule runs—

> 'Quit-rent imposed under this section (Section 6) shall not be liable to increase or decrease on any new assessment save in so far as is above in Rule 1 of this section (Section 6) provided to the contrary in the case of lands which have not been

already assessed by the Revenue Survey now in progress.'

The Legislature evidently contemplated the possibility of a fall as well as a rise in the assessment on revision, and declared that revision rates should not affect the *quit-rent* once imposed on the assessment.

Under Section 6, Rule 3, the quit-rent is calculated at one-eighth of the then assessment *minus* any sum which irrespective of the settlement was payable to Government. This quit-rent could not be affected by revision. But if the sum which was payable irrespective of the Summary Settlement had been imposed under Section 5 of Bombay Act VII of 1863, (repealed by Bombay Act V of 1879, and replaced by Section 49 of that Act), as a *commuted assessment*, such commuted assessment could not be in excess of the assessment to which the land would ordinarily be subject, if no right to exemption existed in respect thereof. Though revision would affect such commuted assessment, it could not affect in any way the quit-rent ascertained under Bombay Act VII of 1863, Section 6, Rule 4.

There is no provision of law which requires judi to be reduced to the level of a revised assessment. It is, of course, competent to Government to allow such a revision as an act of grace, but it could not be claimed as of right.

(L. R. No. 609, dated 8th June 1889; *vide* G. R. No. 4733, dated 3rd July 1889.)

33. Bombay Act VII of 1863 empowers Government to treat *only* with holders. Government are bound to issue sanads to holders unless they demand inquiry, and are not at liberty to recover a summary settlement from any but the holder, his agents or assigns.

Now a "holder" is a person in possession either himself or by his tenants or agents.

A person who has not such possession cannot receive a sanad or be charged summary settlement. Nor can a person in possession be ignored (*vide* I. L. R., VI. B., 247).

Government have nothing whatever to do with questions of disputed title, and are only concerned with possession. If they issue sanads to persons in possession, *i.e.*, to holders, they secure their own revenue without incurring any liability to suit. For whoever may ultimately prove to be the real owner will be bound to pay the summary settlement on obtaining possession, while the issue of a sanad to a person in possession without title, does not prevent the real owner from establishing his right against the person in whose name the sanad has been issued (*vide* Section 7, proviso, of Act VII of 1863, and Bombay High Court Printed Judgments for 1880, page 60.)

The issue of a sanad under Act VII of 1863 is only evidence of a settlement by Government, that

the person, whoever he may be, in possession of certai n land shall be liable to summary settlement, and no more, and that the rights to transfer such land subject to such liability will not be questioned by Government.

Such an agreement under the Act must be entered into with the holder, the person in possession (whether personally, by his agents or tenants) and thenceafter is enforceable against any subsequent holder or person in possession. It cannot be made with, or enforced against any one else.

No one can enter into an agreement that land in some one else's possession shall pay summary settlement.

Nor can Government require any person to enter into an agreement to pay summary settlement for land which is not in that person's possession.

If summary settlement is not paid, the holder of such land alone will be responsible, and he will only be responsible if liability was accepted either by himself or by some other person who at the time of the acceptance was the holder, *i.e.*, in possession.

(L. R. No. 514, dated 20th May 1899; *vide* G. R. No. 4179, dated 10th June 1889.)

34. The answer to the question what is the date from which payment of summary settlement can legally be demanded under Bombay Act VII of 1863 from a person who has agreed to accept the same, appears to be supplied by Sections 6 and 2 of the Act.

Section 6 so far as it relates to this point runs as follows:—

> "When the Governor in Council shall, under clause 1 of Section 2, finally authorize, and guarantee the continuance in perpetuity to the holders * * of land
> * * * * * *
> * * * * * *
> such lands shall *thenceforth* be * * subject to a fixed annual payment to Government calculated at the rate of annas two for each rupee of the assesssment, &c."

Expressio unius est exclusio alterius, and it, therefore, follows that lands summarily settled do not become liable till the final authorization and guarantee under clause 1 of Section 2.

Clause 1 of Section 2 specifies when and how this final authorization and guarantee are to be given. Excluding irrelevant matters the clause runs:—

> "When the holders * * shall consent to the terms, &c. * * it shall be lawful for the Governor in Council to *finally authorize and guarantee by sanad* the continuance in perpetuity of the said land, &c."

It therefore appears that the Legislature has unambiguously expressed its intention that summary settlement should be levied in each case only from

the date of the granting of the sanad, and not either from the date of the Act, or of notice, or of the consent of the holder to the terms and conditions. (L. R. Nos. 1871, dated 20th October 1890, and 871, dated 26th May 1892; *vide* G. Rs. Nos. 134, dated 7th January 1891 and 4891, dated 10th June 1892.)

35. The word 'succession' does not appear to include 'transfer' or 'assignment,' nor does the word 'successors' appear to include 'transferees' or 'assignees.' In the summary settlement also change of possession by inheritance is called succession, as distinct from transfer. The phrase 'succession duty' implies no liability on transfer *inter vivos*. The condition of a grant that nazrána should be leviable on successions or from successors does not, therefore, appear to impose a liability for nazrána on transfer to an auction-purchaser. (L. R. No. 1156, dated 3rd August 1892; *vide* G. R. No. 6701, dated 20th idem.)

II.—TERMINABLE INA'M SETTLEMENT.

1. Lord Elphinstone's scheme for the conversion of ináms already declared continuable for one or more lives into permanent partial alienations upon the holders agreeing to purchase this commutation by the payment of a certain portion of the assessment, was approved in Sir Charles Wood's despatch No. 89, dated 24th December 1864. The terms of the settlement, which is called the "Terminable Inám Settlement," were as follows:—

1. Holders of ináms continuable for one life to pay two-thirds of the revenues.

2. Holders of ináms continuable for two lives to pay half the assessment.

3. Holders of ináms adjudicated to be continuable for three lives to pay one-third the assessment.

In the case of life-holdings it was further ruled that, in the event of any holder dying before the expiration of 10 years from the date of his accepting the settlement, succession would only be allowed on the amount due to Government for the unexpired period being paid as nazar. (G. Rs. Nos. 2115, dated 6th June 1864, and 530, dated 9th February 1865, and despatch to the Secretary of State, No. 43, dated 13th December 1875.)

2. No lapsed holding was revived under the Terminable Inám Settlement, and the terms of commutation were only offered in instances in which an individual during whose life a holding would not lapse to the State, was alive. Grants by the British Government were also treated under the settlement.

The terms of commutation were based upon the state of the holding at the time of the settlement and not upon its condition at the date of decision

by the Inám Commision or grant. This principle being decided upon, all distinction between the treatment of life-holdings, whether originally adjudicated to be continuable for life or which by circumstances had become life holdings, was abolished. In the event of the holders of life ináms not surviving ten years from the date of acceptance of terms, the balance of revenue for the unexpired period was ordered to be paid up before succession could be allowed, and it was directed that no nazrána should be levied on succession to or transfer of these holdings.

An inám entitled to continuance for one generation further than that in which it was on 6th June 1864, but the holder of which had no sons, was treated as in its last generation but one.

The offer of the terms of commutation took the form of a simple question by the local executive officer to the recognized holder or his representative, and if he agreed in writing, the settlement was carried out, and if he refused, the holding remained for escheat to the State in due course, according to the terms of the original decision or grant.

The 6th June 1864 was fixed as the date on which an inám must have been in existence to be included in the Terminable Inám Settlement.

(G. Rs. Nos. 2900, dated 1st August 1864; 3165, dated 20th August 1864, 4506, dated 14th November 1864, and 916, dated 2nd March* 1865.)

3. In the case of the widow of a last proprietor of an hereditarily adjudicated inám, the Terminable Settlement should be applied. But this order is not to have retrospective effect. (G. Rs. Nos. 3139, dated 24th July 1865, and 3939, dated 19th September 1865.)

4. The name of the individual in whose favour a life decision on an inám has been passed, and who has agreed to the "Terminable Inám Settlement," is not to be removed from the lists, and that of the person to whom it is intended to assign the holding should not be substituted. (G. R. No. 3135, dated 24th July 1865.)

5. The following questions having been raised with regard to the mode in which the Terminable Inám Settlement should be carried out, answers

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* The holder of an inám in the last generation but one on 6th June 1864, died on 1st August following before he could be asked whether or not he agreed to be assessed half. He had no sons, and so his nephew became the heir. The question was raised whether the latter should be required to pay down a sum (20 years' half assessment), the interest of which at 5 per cent. would equal the revenue relinquished. In this case it was held that the inám should be treated as though the settlement had been accepted, and continued to the nephew on payment of half assessment, provided he consented to pay the arrears due from 6th June 1864, and that no lump sum was recoverable from him. (G. R. No. 4912, dated 6th December 1865, and G. M. No. 5103, dated 23rd idem.)

were recorded by Government as shown opposite each question:—

Question.	*Answer.*
1st.—If the last generation consists of several brothers, and the eldest dies within the prescribed ten years, are the survivors to pay up the balance, and, if so, who is to do so, *i.e.*, the eldest surviving brother, or the heir of the deceased?	*1st.*—Nothing is due during the existence of the generation, *i.e.*, during the lifetime of all the brothers.
2nd.—On the death of all the brothers who is to pay up the balance, *i.e.*, the heir of the elder, the heir of the younger, or the heir of the last survivor?	*2nd.*—Cases of this kind must be decided on their merits. If there is a disagreement, payment should be demanded from the party actually in possession; and if this point cannot be ascertained, from the heir of the eldest brother.
3rd.—In the event of a disagreement as to the acceptance of the terms, whose wishes are to be acted on?	*3rd.*—*Vide* the preceding answer.
4th.—How are cases to be disposed of where the judi equals the amount of assessment?	*4th.*—The practice adopted in Belgaum should be carried out elsewhere, and summary settlement sanads issued gratuitously.
5th.—How are the cases to be disposed of when the judi is in excess of the assessment?	*5th.*—The Alienation Settlement Officer, S. D., recommends that sanads should be granted gratuitously in the case of unadjudicated ináms; but that in the case of ináms adjudged to be terminable, no sanads should be issued, but that the ináms should be allowed to lapse according to decision. Sanads should be granted gratuitously in both instances.

(G. R. No. 1365, dated 6th April 1867.)

6. In the case of ináms coming under the Terminable Settlement the entry of new names may be made on transfer by sale, &c., provided the balance of the lump sum payment of judi settled on the ináms is paid up in advance. (G. R. No. 3545, dated 10th July 1874.)

III.—DUMA'LA VILLAGES.

1. Dumáldárs are not entitled to fees on copies of the records of their villages. Every person in-

terested in the accounts of a village is entitled to take copies of the accounts free of charge.

It is impossible to lay down a hard and fast line to regulate the conduct of Pátels and Kulkarnis towards the Dumáldárs of their villages. The custom of the country should be adhered to as far as possible.

It would not be practicable to direct that whenever a village officer's presence is required, he should be summoned through the Dumáldár, who may be away, nor are the Dumáldárs entitled to demand that this be done. The village officer's replies to Government references must also be sent direct. If any information is required from the Dumáldárs they will be addressed, and not the village officers.

(G. R. No. 1725, dated 1st April 1874.)

2. The practice of receiving nazarbhets from Pátils of dumála villages and of making presents of turbans to them in return at the time of the jamábandi should be discontinued. (G. R. No. 5007, dated 18th July 1890.)

IV.—JA'GHIRS, &c., IN SIND.

1. The terms of Sir C. Wood's despatch ordering that pátidári grants should be continued on the existing terms to the present holders and their descendants in lineal succession, does not mean that, in case of failure of heirs to the holder at the time of the settlement, the grant should lapse, even if there be a descendant of the original holder alive. One of the principles of the jághir settlement was that while grants made by the Tálpurs during the period immediately preceding British rule were to be resumed after a certain period of enjoyment, grants made at an earlier time, much more those which dated from a time previous to the Tálpur conquest in 1783, should be continued hereditarily. The pátidári grants (which only involve a revenue of Rs. 8,600) are all traceable to the time of the Afghan Rulers of Sind and are supported by title deeds. Their antiquity is unquestionable. Sir B. Ellis, therefore, recommended that they should be left intact as long as a lineal descendant of the original grantee survived. The Government of Bombay supported this recommendation and the Government of India sanctioned it. The Secretary of State, Sir C. Wood, in reviewing the proceedings, remarked that the "amount of alienations could not under the circumstances be considered too liberal" and that he "must rely on the assurance of Government that it was sufficiently so." It is clear, therefore, that, had the Secretary of State intended to disallow any recommendation on behalf of the pátidárs, the same would have been specifically mentioned, and, in the absence of this, Government have no hesitation in authorizing the Commissioner in Sind to continue the pátidári grants to lineal male descendants of the original grantees. (G. R. No. 1840, dated 10th April 1878.)

2. Apart from the Government rental on the land, the Zamindárs in Sind have certain haks under the name of zamindári, lafa, deh kharch, which vary in almost every village and district.

The Sind Survey Settlement Officer should, in making his settlement, define what are the rights of the Zamindárs in each village, or class of tenures, and should either consider them in the lump sum to be paid by the Zamindárs to Government, or where the occupants hold direct from Government, fix the amount or the share of the produce the Zamindár is entitled to, and having included it in the jamábandi, pay him the amount from the treasury annually out of the collections. (G. R. No. 5329, dated the 18th October 1878).

3. Although the Jághirdárs (Beluch Chiefs) of the Upper Sind Frontier District have no legal claim to exemption from payment of the hakába and local cess, and Government would be acting strictly within their power in enforcing the payment, there is sufficient reason why Government should refrain from exercising their right. The amount payable is comparatively trifling, but the Jághirdárs are not men in affluent circumstances, they have rendered and are rendering efficient service of the nature demanded from them, and on account of which they hold their lands, and valid political reasons exist to induce Government not to require them now to pay these rates. The Jághirdárs should, however, be told that the concession is a pure matter of favour and is revocable at the pleasure of Government, and that their lands are strictly service grants held in consideration of services to be rendered and of the exertions of the holders to preserve peace and order on the frontier; that the collection of hakába is foregone only so long as the cost thereby incurred by Government without return is moderate, that is to say, if a Jághirdár takes advantage of the indulgence to farm out his jághir and bring large areas under cultivation with great profit to himself and much increased consumption of Government water, such terms will be imposed as may be necessary to secure the public interests. If it should appear unnecessary to make the concession in perpetuity, the hakába and local cess should be imposed on the first succession to a jághir after the date of the issue of these orders. All large land-holders may reasonably be expected to contribute to the local cess as a fund for the execution of works of local benefit, but if the Jághirdárs cannot be prevailed upon to pay it voluntarily at once, the payment should be exacted on the occasion of the first succession, at any rate on the cultivated area. Formal sanads clearly embodying these conditions may be issued to these Jághirdárs. It should be distinctly expressed in the sanads that the levy of hakába and the local cess is postponed as a matter of favour and during good behaviour and for so long only as may seem proper to Government in regard to the circumstances of the district and the particular estate. (G. Rs. Nos. 1171, dated 25th July 1881, and 9406, dated 21st December 1883.)

4. The nature of a jághir as an essentially resumable estate should not be overlooked. This character of a jághir is expressly insisted on in

*Repealed by Act VII of 1863.

Bombay Regulation XVII of 1827, Section 38,* and it has generally been held in the Courts that even when a jághir has by good will or sufferance or neglect been continued for generations, any alienation carved out of it by an individual Jághirdár would not subsist beyond his life. In such estates there is a reversionary right retained by the overlord, which cannot be impaired by grants out of the limited estate either of corporeal or incorporeal rights. Were it otherwise, the purpose of the grant would generally be defeated. (G. R. No. 89, dated 10th January 1888.)

V.—INA'MS GENERALLY.

1. A grant in inám does not convey an hereditary title unless the hereditary tenure be specified. (G. R. No. 1366, dated 11th April 1860.)

2. A grant "to a man, his children and grandchildren" or to "his descendants in lineal succession for generation after generation in perpetuity and for ever," when unburdened with condition as to prospective service, and free from religious and charitable trust, confers an absolute estate and is, therefore, alienable. (L. R. No. 439, dated 22nd April 1893; *vide* G. R. No. 3541, dated 15th May 1893.)

4 B. H. C. R., 1 A. C. J. West and Bühler Hindu Law, p. 721, and cases there quoted.

Mayne's Hindu Law, Section 365, and cases there quoted.

3. Whenever a separate survey number can be formed from the excesses in inám lands discovered by the Survey Department, it is better to form it than to distribute the assessment of the excess over the whole alienated land. When no separate number represents the amount of excess, the holder may pay, as judi on the whole, the assessment on the excess so far as it cannot be contained in a separate survey number, and if the holder do not wish this, the Superintendent must direct the demarcation of the portion in excess.

With regard to the village servants, there is no objection to their being allowed to retain land found in excess of the authorized holding whenever the whole, including the excess, is not more than is required for their remuneration for the performance of service. (G. R. No. 2877, dated 17th August 1860.)

4. Itlak inám allowances in the Ratnágiri Collectorate, which are cash assignments in lieu of lands, should be settled on the principle of the summary settlement. (G. R. No. 3348, dated 1st October 1863.)

5. The following proposals of the Revenue Commissioner, S. D., relative to the treatment of inám lands in the Khándesh Collectorate, a large proportion of which may be waste, were approved by Government:—

"I would propose that in Khándesh, the circumstances of which Collectorate as regards want of cultivation are altoge-

ther exceptional, any Inámdár, a large proportion of whose holding may be waste, be relieved of the payment of chauthái *in cash* on his giving up to Government uncultivated land assessed at an amount exceeding the proper cash chauthái by one-third, that is, at one-third (instead of one-fourth) of the assessment of the entire holding, the remaining two-thirds being held subject only to the annual nazrána of one anna for each rupee of their assessment. A person holding an inám of rupees one hundred and twenty and therefore liable to pay rupees thirty *in cash* as chauthái, might thus, if a large proportion of his holding be uncultivated, get rid of the cash payment, by giving up waste land assessed at rupees forty,* the remaining eighty rupees worth of land (including all that is cultivated) being held by him subject only to an annual nazrána of eighty annas or five rupees. To cover the *most* extreme cases, the Collector might be allowed to remit the nazrána by his special order in any year when he might be satisfied that its payment would press heavily on the Inámdár as bearing a high proportion to the value of the land under cultivation, and actually yielding rent to the Inámdár. As for instance if only five or six rupees worth of the inám of one hundred and twenty rupees assessment mentioned as my last illustration were under cultivation and paying rent.

* Rs. 30 plus a third more Rs. 10.

"On the same principle the judi † due to Government on account of a partially assessed inám might, if a considerable portion of the inám were waste, be relinquished on the holder giving up waste land assessed at a third more. Thus if rupees thirty be due as judi on an inám valued at Rs. 100, of which one-half is waste, the Inámdár might be for ever exempted from the payment of the judi Rs. (30) on his giving up waste land valued at rupees forty ‡, the remaining (Rs. 60) worth of land being treated as *sarv* inám subject under the summary settlement to rupees 15 as chauthái and rupees three and annas twelve as annual nazrána. Should the sixty rupees worth of land also include a large proportion of waste, the Inámdár might further have the option of giving up in lieu of the chauthái payment of rupees fifteen, waste land assessed at rupees twenty, the remaining forty rupees worth of land being held subject only to the annual nazrána of forty annas, which, if found to press heavily in consequence of want of cultivation, might be remitted from year to year so long as requisite, under the special orders of the Collector. This provision is proposed only to meet the case of ináms of which such a large proportion may be waste and would probably for years continue to be so, as to render even the payment of the regular annual nazrána a hardship."

† From a letter of the Acting Collector of Khándesh, No. 1307, dated 25th October 1861, it appears that in most parts of that Collectorate the judi due on inám land is not levied *in full* unless the land is *fully* cultivated. Thus, if in any one year one-half of certain land remained waste, only *half* the judi due on it would be levied in that year. The arrangement proposed here would put a stop to these varying payments.

‡ Rs. 30 plus a third more Rs. 10.

Rs. 15 plus a third more Rs. 5.

(G. R. No. 99, dated 9th January 1862.)

6. In the Northern Division the practice of allowing relinquishments of portions of inám lands in lieu of the settlement judi payable on the entire holding has obtained only in the Panch Mahals, in the Southern Division only one isolated case occurred in Kaládgi so far back as 1864, and in the Central Division the practice has only prevailed in Khándesh and in the tálukas of Násik transferred to that district from Khándesh. In Khándesh the custom has been to allow the land of the value

of 8 annas in the rupee to be relinquished in lieu of the settlement of 6 annas in the rupee. In other words, Government require a margin of one-third of the amount of settlement as compensation. The same system of calculation should be followed in the Panch Máhals as is observed in Násik and Khándesh. (G. R. No. 2798, dated 1st January 1880.)

7. When an Inámdár dies without heirs, his inám land should at once be made khalsat, and dealt with as the Collector thinks proper, subject to any order which may be made by the Civil Court under Section 10 of Regulation VIII of 1827. Should in any case, after land has been made khalsat, heirs of the deceased Inámdár appear, the matter should be referred for the orders of Government, who will issue suitable orders.

The right of occupancy in lands thus made khalsat is not be be sold in such manner as to disturb actual possession. (The right of occupancy as superior holder in inám land vests in the Inámdár, and not in his tenant. The Inámdár's right will be sold, subject to the tenant's actual possession.)

These orders are not intended to interfere in any way with the provisions of Acts II and VII of 1863.

(G. Rs. Nos. 1983, dated 25th April 1372, 2935, dated 19th June 1872, 3605, dated 25th July 1872, and 4100, dated 19th August 1872.)

8. The holder of an inám cannot convey to another person any right over the inám lands greater than his own. If the lands in his possession were liable to resumption on the happening of a certain contingency (such as the death of the holder) they are equally so liable in the possession of the holder's mortgagee. The contingency in question having happened, and the lands having been resumed, the claim of the late holder's mortgagee thereto ceases to exist, whatever claim he may have against the heirs, if any, of the deceased. On the reversion of the land to the original grantor, all subordinate rights therein created by the grantee necessarily lapse also.

But 'resumption' does not mean ousting of possession. It is always taken to mean the continuance of the land in the hands of the actual occupants thereof so long as they do not fail to pay the full assessment leviable in respect of it. (L. R. No. 1003, dated 27th July 1883; *vide* G. R. No. 5953, dated 11th August 1883.)

9. Land wholly or partially exempt from the payment of Government land revenue is liable on the death of the last holder intestate and without known heirs to be dealt with under Section 10 of Regulation VIII of 1827, and the High Court may direct either (*a*) that it should continue under the management of an administrator appointed by the District Judge, or (*b*) that it be sold under the authority of the Court, and that the proceeds be deposited in the public treasury for the eventual benefit of all concerned.

If the latter course be taken, the exemption being a heritable transferable property, the land must

necessarily be sold free from liability to assessment, as otherwise the person entitled to the proceeds would lose part of the value of the estate.

But if this sale takes place, Government must necessarily lose what, if there are no heirs or assignees of the intestate, Government would otherwise gain, *viz.*, the right to the full assessment which might be levied on the extinction of all rights to exemption.

Government modified Resolution No. 1983 of 25th April 1872 by Government Resolution No. 2935, dated 19th June 1872, by directing that the Collector should deal with such lands subject to any order that may be made by the Civil Court under Regulation VIII of 1827, Section 10. But the Resolution thus modified directs the Collector to declare the lands *khálsa* at once, and leaves any heirs that may subsequently appear to be referred to Government.

It has been pointed out that an order declaring the land khálsa may be practically set aside by an order of the District Judge appointing an administrator, and that no executive order could operate to make the land khálsa. This difficulty is one that could only arise when the High Court has directed the *sale* of land wholly or partially exempt for the eventual benefit of all concerned.

But this procedure would only be followed in cases in which no person had appeared and established a right.

Before such procedure can be taken, Section 10, clause 1, requires a proclamation to issue calling upon the heir of the deceased or *any person entitled to receive charge of the property* to attend and prefer his claim, and under clause 3 of the same section, if any person appears and satisfies the Judge of his right to the possession of the property or any part of it as heir, executor, administrator *or otherwise*, it *shall* be delivered up to him.

If no such person appear or establish such right, there are two alternatives open to the High Court:

(*a*) to direct the property to continue under the management of an administrator for a further period, or

(*b*) to direct a sale.

But if there be no heir, assign or other person claiming through the deceased intestate, the property lapses to the Crown by escheat.

The property vests in Her Majesty not by virtue of Regulation VIII of 1827, but by virtue of the territorial law of British India.

1 Beng. L. R., O. C., 87.

On failure of heirs, the Collector would be as much 'entitled to receive charge of the property' on behalf of Her Majesty, as any other person to whom rights accrued on the death of the deceased.

If any heir subsequently appear, the result would be the same as if the estate had been claimed by a private person whose right was afterwards found to be excluded by a better title.

In such case, Government would be responsible to such heir.

But there is no necessity for a sale by the Court, nor could the property be sold, if the Collector claimed that he was entitled to receive charge of the property on behalf of Her Majesty.

In order, however, to avoid the risk of litigation in such cases as to claims that might afterwards be brought forward, the High Court might be moved to direct under Section 10, clause 4, that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimally small, and Government might then through the Collector put in their claim to the property as having passed to Her Majesty by escheat. The land could then be dealt with as proposed in Government Resolutions Nos. 1983 and 2935 of 1872.

The declaration that the land had become khálsa would no doubt be inoperative, as against any person purchasing the property as the estate of the deceased under the order of the Court. But such an order could not be passed if the land were claimed by the Crown. For sale can only be directed when no one appears and establishes a right to receive charge of the property. Government appear to have as good a right to put in their claims and protest against such sale as any other claimant to the estate of an intestate, and if it appear that there are no heirs, &c., the Courts would be bound to recognize the right of the Crown, and to direct delivery to its officers, on such claim being preferred, instead of directing a sale.

The point has, so far as can be ascertained, never been decided, but there are several cases on record in which Government have claimed the right to specific property by escheat and there is no law which requires that, instead of taking the specific property, Government would be entitled only to the proceeds realised by its sale. Legislation seems, therefore, unnecessary.

The question involved might perhaps be raised in a test case if desired, and if the High Court hold that intestate property must in all cases be sold whether the right of the Crown is put forward or no, steps might then be taken to modify the law as to the procedure to be taken in such cases. But the rights of the Crown do not depend on Regulation VIII of 1827, and Section 10, clause 4, only prescribes the procedure when no claim whatever is preferred to the property.

(L. R. No. 1221, dated 9th November 1888; *vide* G. R. No. 8407, dated 15th December 1888.)

10. The benefit of the summary settlement accrues to each successive holder or tranferee, and it is immaterial under both of the Summary Settlement Acts (*vide* Section 3 of Bombay Act II of 1863 and Section 7 of Bombay Act VII of 1863) whether the adjustment is made with a *de facto* or a *de jure* holder.

Apparently the only way in which Government can take advantage of an escheat of alienated land or the decease of a holder intestate and without heirs, is by claiming it on behalf of the Crown and declaring it to be khálsa instead of allowing it to be sold under Regulation VIII of 1827 as the property of the deceased.

(L. R. No. 802, dated 28th June 1893; *vide* G. R. No. 5137, dated 14th July 1893.)

11. The following are the rules for the settlement of the land and cash alienations (other than those to District Hereditary Officers) in the Panch Maháls:—

Settlement of Land Alienations.

(1) All lands held in trust for religious or charitable institutions, the estimated value of which has been allowed for in the exchange of territory with His Highness Scindia, shall be continued in perpetuity as endowment property, provided that the proceeds are still devoted to the support of the institutions for which they were originally granted.

(2) All lands held by individuals as personal ináms without the condition of service, the estimated value of which has been allowed for in the exchange of territory with His Highness Scindia, shall be continued hereditarily to lineal male heirs in male descent of persons who were in possession at the time of the cession of the Panch Maháls, or of those whose names are found entered in the accounts or in any authentic documents of His Highness Scindia; or in perpetuity as heritable and transferable property on the payment of the two-anna quit-rent levied in Gujarát under Act VII of 1863.

Note.—Inám lands which were allowed for in the exchange accounts, but which are now found to be held by the widows' daughters and daughters' sons of those whose names appear in Major Buckle's Book may be allowed to be held as heritable and transferable property on payment of a quit-rent of two annas in the rupee. If the holders decline to accept these terms, their inám lands should, at their death, be resumed. (G. R. No. 1428, dated 9th March 1881.)

(3) All lands held in trust for religious or charitable institutions, the value of which was not allowed for in the exchange of territory, but proved by entries in the village accounts or otherwise to have been wholly or partially free of assessment for a period of 12 years antecedent to 1860-61 (the date of the cession of the Panch Maháls to the British Government), or to have been recognized as wholly or partially rent-free by British officers during the period (1852-53 to 1859-60) the Panch Maháls were under the political superintendency of the British Government on behalf of Scindia, shall be continued in perpetuity as endowment property, provided that the proceeds are still devoted to the support of the institutions to which they were originally granted.

(4) All lands held by individuals as personal ináms without the condition of service and circumstanced as stated in Rule 3 which may have

been registered under the notification of the 22nd December 1865, published with the sanction of the Revenue Commissioner, shall be continued in perpetuity as heritable and transferable property subject to the payment of the two-anna quit-rent levied in Gujarát under Act VII of 1863.

(5) All lands not fulfilling the conditions laid down in Rules 1 to 4, but claims to which may have been registered under the notification of the 22nd December 1865, may, unless the claims appear to the Settling Officer to be so entirely unfounded as to warrant resumption, (in which case an appeal will lie as hereinafter provided), be continued, subject to the payment of a quit-rent of from one-fourth to one-half of the survey assessment, in perpetuity as endowment property in the case of those held in trust for religious or charitable institutions, and as heritable and transferable property in the case of those held as personal ináms. Provided that lands claimed by hereditary district and village officers on any other than service tenure shall be considered as held on that tenure, unless they are proved to be held on some other tenure to the satisfaction of the Settling Officer.

Note.—The intention of this rule is that the quit-rent of these lands should be fixed in accordance with the revenue settlements as made from time to time; in other words, that the *proportion* to be paid by the watandárs should be fixed in perpetuity, and the actual amount payable by them would vary with the settlements of land revenue made from time to time. (G. R. No. 6636, dated 24th December 1878.)

(6) The non-entry in the village and survey accounts of any lands claims to hold which wholly or partially rent-free have been registered shall not be considered conclusive evidence of the non-existence of the exemption claimed, and *vice versâ*.

(7) In the case of the disallowance of a registered claim under the 5th Rule, an appeal may be made within a month of the date of decision to the Revenue Commissioner, N. D., whose order in the case shall be final.

(8) Claims of Pátels or other hereditary village officers or village servants to hold on condition of service shall be disposed of under the rules sanctioned by Government for the settlement of the emoluments of village officers. Provided that "Jivái," or maintenance land, shall not be considered to be held for the performance of Pátel's service merely on the ground of its being held by a Pátel, and shall not be appropriated or set apart as the official remuneration of a Pátel, except under special arrangement on the general settlement of pátelships in the district.

(9) Lands claimed by several parties, but not in the actual possession of any of them, shall be fully assessed provided that if within a year from the date of the Settling Officer's order a decree from a Civil Court be produced declaring the right of any particular party, and it be shown either that the officer in revenue charge of the district has been made a party to the suit and the

claim has been allowed notwithstanding his opposition, or that that officer admits the claim to exemption, only the quit-rent that would ordinarily have been imposed on the land under these rules shall thenceforward be levied.

(10) All proceedings under these rules shall be summary, and no appeal shall lie from the decision of the Settling Officer except in the cases provided for in them.

(11) Any person not attending before the Settling Officer to support his claim within one month of his being summoned to do so shall be liable to have full assessment imposed on his land, and no appeal shall lie against such decision.

(12) The word "lands" in these rules includes villages and shares of villages.

Rules for Cash Allowances.

(1) Allowances held on behalf of temples, mosques, or other religious institutions and allowed for in the accounts of the exchange of territory between the British Government and His Highness Scindia to be continued permanently as devasthán grants.

(2) Allowances held as above, but not allowed for in the exchange accounts, to be subjected to a deduction of one-half whenever enjoyment for twelve years previously to the introduction of British rule in 1860 cannot be established, and of one-fourth when such enjoyment can be proved, and continued permanently as devasthán grants.

(3) Allowances going below one rupee by the process of deduction to be bought up at twenty times the reduced amounts and struck off the accounts.

(4) Allowances paid from different villages or tálukas on account of the same institution to be amalgamated and disbursed in one sum from the treasury of the district in which the institution is situated.

(5) Allowances of Rs. 5 per annum and under to be paid through the Pátel of the villages in which the devasthán̈s are situated. All above this amount to be paid direct from the táluka treasuries.

(6) All dharmáda allowances held by individuals in their own behalf and allowed for in the exchange accounts to be continued hereditarily to the lineal male descendants in male descent of the persons who were in authorized possession at the time of the cession or of those whose names are found entered in the accounts, though deceased, and also of those whose names are entered in any authentic document issued by the Government of His Highness Scindia.

(7) Dharmáda allowances held by individuals on their own behalf, but not allowed for in the exchange accounts to be subjected to a deduction of one-half whenever any enjoyment for twelve years previously to the introduction of British

rule in 1860 cannot be established; the deduction to be one-fourth when such enjoyment can be proved. Such allowances to be continued hereditarily or, at the option of the holders, bought up at ten times their amounts. All items, however, of Rs. 5 and under to be bought up irrespectively of the consent of the holders.

(8) Allowances held by village hereditary officers and village servants to be disposed of under the rules laid down by Government for the settlement of this description of holdings.

(9) Payments of the nature of Malvera to be discontinued and appropriated towards giving Chowra Kharch allowances to Pátels.

(10) Special cases to be disposed of on their merits.

(11) Practions attaching to allowances, whether in their original or reduced amounts, to be got rid of under the usual rules.

(G. Rs. Nos. 4656, dated 19th September 1872, and 2537, dated 3rd May 1875.)

12. When isolated inám lands placed under attachment can be managed by the Taláti or Kulkarni of the village in which they lie, and do not exceed in value Rs. 100 a year, no deduction should be made, but when they have to be managed in any other than a directly managed khálsa village, the usual percentage for management should be charged, however small the annual value of the land under attachment may be. (G. R. No. 5753, dated 22nd November 1872.)

13. Their Lordships of the Privy Council in the case of *Forbes* v. *Mir Mahomed Taki* (*13 Moore's I. A. 463) reviewed the decided cases, and stated that "the conclusion they would draw from them, as well as from the reason of the thing, is that in every case the right to resume must depend in a great measure upon the nature of the particular tenure, or the terms of the particular grant." And they further agreed with the observation of Mr. Justice Jackson in *Báboo Koolodeepsing* v. *Máhadeosing* (VI. W. R. 199) "that there is a clear distinction between the grant of an estate burdened with a certain service, and the grant of an office the performance of whose duties is remunerated by the use of certain lands." Their Lordships further held that "where the continued performance of certain service is, upon the true construction of the grant, the condition on which the lands are to be held" the tenure is liable to resumption, and they seem to have approved the decision of the Sadar Diwáni Adálat allowing land to be resumed in the case of *Máharája Shreeschunder Bál* v. *Madub Mochee* on the ground that "the tenant whose services had been dispensed with or had otherwise ceased, was clearly the mere private servant of the Mahárája. He was the person bound to perform all the leather work required in the family.

* The case is also reported at 5 B. L. R. 529, and at 14 W. R. 28 P. C.

These are the principles which must now be recognized by the Courts of India in deciding questions relating to the resumption of service lands.

(L. R. No. 965, dated 15th August 1877; *vide* G. R. No. 5080, dated 20th idem.)

14. The Collector of Dhárwár having asked for instructions as to the course to be adopted in the case noted in the subjoined letter:—

"The village of Agadi is held in inám. It is entered in the revenue accounts as held by Hanmantgauda Bahádur Desái, but there are four equal sharers in it, namely:—

(1) the said Hanmantgauda,

(2) Basangauda bin Chikangauda,

(3) Bishtangauda bin Lingangauda, and

(4) Bayábái kom Putlingangauda.

"Bayábái is a minor and her estate came under the management of the Collector three years ago and is still under my management.

"The two sharers Nos. 1 and 2 mortgaged their shares of the village to the Jághirdár of Javur. When Bayábái's estate came under the management of the Collector, an order was given that the revenue of the village should be collected through the village officers (Section 85 of the Land Revenue Code) and not directly by the parties. The minor's share has in this way been realized each year.

"The village officers collected the revenue of 1879-80. No. 1, Hanmantgauda, refused to receive his share from them and claimed a right to collect the whole directly. Similarly, the mortgagee claimed a right to collect the revenue directly from the cultivators. The revenue minus the shares of Bhistangauda and Báyábi was kept in deposit in the treasury and it was attached by the Civil Court at the instance of another creditor of Hanmantgauda and Basangauda.

"The mortgagee then sued Hanmantgauda and Basangauda to obtain a declaration of his right to collect the revenues of the village appertaining to the defendants' eight-annas share therein, and on 19th January last, obtained a declaratory order to that effect. On 27th February, he sent me a copy of the decree and prayed for an order to the village officers to pay to him the defendants' share of the revenue. The defendants still disputed the mortgagee's right and I refused to interfere unless the Civil Court sent me an order to comply with the decree. The share of the revenue for last year was therefore paid as formerly by the village officers to the two inámdárs.

"I beg to enquire whether in future the share of the revenue belonging to Hanmantgauda and Basangauda should be paid to the mortgagee under the authority of the Court's declaratory order or not. Hanmantgauda has recently died and his heir's name has not yet been entered in the accounts."

he was directed to act in accordance with the course suggested in the following report of the Remembrancer of Legal Affairs, No. 592, dated 23rd January 1883, copies of which were also forwarded to the Commissioners of Divisions and all Collectors:—

"The Remembrancer of Legal Affairs has the honour to state that as the decree obtained by the mortgagees is a declaratory one merely, the Civil Court will not take any step for its execution. A decree capable of being executed could not have been obtained by them unless they had made the Collector, or at any rate the village officers, parties to the suit—a course which it is not desirable to compel people

to take needlessly. The decree which has been procured by the mortagees is, as between the parties thereto, a binding declaration of their right to receive the two defendants' share of the village revenue, and the village officers should, I think, be instructed to act in conformity with it."

(G. R. No. 592, dated 23rd January 1883.)

15. The following opinion of the Remembrancer of Legal Affairs No. 110, dated 23rd January 1884, deals with the question whether the heirs of a first husband can inherit inám property belonging to the second husband of a Hindu woman :—

"It is the settled Hindu law of this Presidency that a widow takes only a life-interest in the immoveable property of her husband dying without male issue, and that on her death the property passes to the next of her husband. (*Jamiatram* v. *Bai Jamna*, 2 Bombay High Court Report, 10, and *Bhaskar Trimbak Acharya* v. *Mahadeo Ramji*, 6 Bombay High Court Report, I. O. C. J.) The inám property which Bai Heta inherited from her second husband belongs, therefore, since her death to those persons who would have been his heir if he had died at the time when his widow died. Moti, the son of Bai Heta's son by her first husband, has no right to succeed to any property of her second husband to whom he was an entire stranger.

"But assuming that the inám in question has been brought under the Summary Settlement Act, Government would only have a right to discontinue it in the absence of all heirs, even the most distant, to Bai Heta's second husband, Jessa Bhika. Moti is not entitled to the property as a reversionary heir on the death of his grand-mother, but the person *primâ facie* entitled to dispute his right to hold it is the nearest heir of the man Jessa Bhika, and if the nearest heir has recognized or acquisced in Moti's enjoyment of the property, that is sufficient, as against Government, to give Moti a good title, for the property is transferable as well as heritable in pepetuity.

"I am of opinion, therefore, that Government are only entitled to intervene if Jessa Bhika has left absolutely no heirs."

(G. R. No. 1285, dated 11th February 1884.)

16. Questions regarding saranjáms will be disposed of exclusively in the Political Department, reference being previously made to the Revenue Department whenever the interests of Government in that Department appear to be affected. (G. M., P. D., No. 4400, dated 8th July 1887.)

17. Registers of abstracts of decisions passed by the Inám Commissioner under Act XI of 1852 should be prepared for all the districts concerned, and 14 copies of the register for each táluka when completed should be supplied to Government. (G. R. No. 2914, dated 16th April 1886, and G. M. No. 4712, dated 11th July 1891.)

18. For the purpose of calculating the revenue of the current year payable to the family of the deceased holder of a personal inám continuable for life or of a saranjám, the revenue year (*i. e.* from 1st August) should be adopted. (G. R. No. 3635, dated 25th April 1892.)

VI.—SANADS.

1. Sanads for inám lands or for cash allowances which have become worn out and useless may be renewed on payment of a fine at the rate of one anna

on each rupee of the Inám or cash allowance with a minimum limit of one rupee and a maximum of Rs. 50. (G. Rs. Nos. 6012, dated 25th October 1875, and 6537, dated 6th December 1879.)

2. The fine should be recovered in cash, and the new sanad should be an exact copy of the original one. If the two agree, the printed standard form can be used. The renewed sanad should be endorsed thus :—"Fine Rs. levied and a fresh copy delivered on this the day of 18 ." (G. R. No. 670, dated 29th January 1876.)

3. If one or more survey numbers recorded in a sanad are relinquished by transfer to other private individuals, a new sanad should not issue. The party to whom the transfer is made can arrange to obtain copy of the original sanad in the usual manner. (G. R. No. 2724, dated 5th May 1876.)

4. When one out of several survey numbers included in the same sanad is relinquished to Government, there will be no occasion to take a separate rázináma or formal deed of relinquishment in addition to that endorsed on the sanad itself, which should of course be signed by the holder. This order refers only to cases in which a sanad-holder wishes for his own sake or on behalf of his transferee that the relinquishment or transfer should be noted on his sanad. Government do not wish it to be considered obligatory on the holder of a sanad to offer it for endorsement, should he give up to Government or any private person a portion of the land for which it was issued. When all the numbers included in a sanad are relinquished to Government, the sanad should be recalled and cancelled. (G.Rs. Nos. 3669, dated 23rd June 1876, and 5102, dated 6th September 1876.)

5. Alteration in the entries of inám lands, such as transferring personal inám to the head of devasthán, cannot be allowed without the sanction of Government, as no authority but that of Government is sufficient to sanction a change of tenure. (G. R. No. 6279, dated 2nd November 1876.)

6. When waste land is given to an Inámdár in exchange for his inám land taken up by Government, no fresh sanad need be issued to replace the one already existing. It will be sufficient in such cases if the existing sanad is altered, care being taken that the Inámdár's assent to the exchange is endorsed on the sanad, while the alteration in the deed should be certified by the Collector's signature. (G. R. No. 7851, dated 23rd December 1881.)

7. Neither Section 213 of the Bombay Land Revenue Code, nor Section 91 of the Registration Act applies to copies of sanads. Sanads being documents which Government give into the hands of the persons whose titles they evidence, they do not form part of the records of any Government office. The only record kept of them is a register. Hence the law provides for extracts being given from these registers when applied for, but not for the grant of

copies of the sanads themselves. (L. R. No. 673, dated 15th May 1883; *vide* G. R. No. 4180, dated 2nd June 1883.)

8. In cases in which it is found necessary to make out a sanad in the names of several sharers of watans, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad be granted, but an extract from the register of sanads may be given on payment of the fees prescribed in the rules under Section 213 of the Land Revenue Code and Section 91 of the Registration Act. (G. R. No. 4180, dated 2nd June 1883.)

9. When issuing revised sanads to holders of summary settlement sanads new conditions of tenure cannot be imposed. No terms should be inserted other than those prescribed by Bombay Act VII of 1863. It is inconsistent to head a sanad as issued under Act III of 1863 and then to insert in it conditions which are not warranted by the Act. (L. R. No. 104, dated 24th January 1888; *vide* G. R. No. 2074, dated 4th April 1888.)

10. In cases of mere clerical mistakes in sanads, Commissioners are authorized to sanction their cancellation and the issue of fresh ones in their stead without reference to Government, except in matters beyond the scope of the Commissioner's proper authority. (G. R. No. 5589, dated 8th July 1892.)

11. Sanads once issued are the property of the holders thereof, and it was never contemplated that they should be renewed or altered otherwise than with the consent or at the instance of the holders themselves, except in the following cases:—

(1) When they refer to land which had not been surveyed and assessed when they were granted, and contain entries of areas, salámi, &c., expressly declared to be provisional only and liable to revision when the land is surveyed.

(2) When they are vitiated by some clerical error in making them out.

(3) When the land to which they relate has been entirely surrendered to or resumed by Government, in which case they should be re-called and cancelled if possible.

In other cases Government are not concerned in the renewal of sanads, though, when any changes occur which are likely to obscure the identity of land, the holders of them should be encouraged to present their sanads for endorsement or renewal if they prefer it, and are willing to pay the renewal fee. For Government purposes it is sufficient that all such changes should be duly recorded in Village Form IX, so that the identity of the land, for which the sanad was originally granted, can be readily traced through all subsequent changes of number, area, or assessment.

(G. R. No. 6003, dated 16th July 1894).